

1 position, that's really not where I'm supposed to be
2 as far as what the charter dictates my position to
3 be. But I was invited to the meeting, and I just
4 wanted him to know that I had heard that there were
5 some issues. And, like I say, typically, it's
6 through the paper and hearing rumblings and on
7 occasion, we get -- I'm on a local talk show, so we
8 get some phone calls from people that don't identify
9 themselves, but they let us know some things are
10 going on. And some you find out once you start
11 asking the city manager and he does an
12 investigation, some you find that are valid and some
13 you find that are not.

14 Q. Okay. And who was the fire chief at that
15 point in time that you were just discussing?

16 A. Prater. Chief Prater.

17 Q. Jerry Prater?

18 A. Yes.

19 Q. Who was the interim city manager?

20 A. Max Wilkes.

21 Q. Now, Mr. Mayor, I've heard it's been said
22 about you -- and this is not new for a lot of city
23 mayors -- that you have an open door policy and you
24 are receptive to communications from city employees,
25 whether they be firefighters or police or citizens

1 in general. Is that a fair and accurate statement,
2 that you do have that sort of open door policy?

3 A. It is.

4 Q. And have you continued that open door
5 policy during the two years that you have been
6 mayor?

7 A. I have. You have to be very limited,
8 because some people want to -- it's real easy for
9 someone to say that the mayor said this, and that
10 may not be exactly what you said or it may not be
11 what you implied. So in my position, you've got to
12 be very careful because you don't want to -- you
13 know, we are governed by a charter, and you want to
14 make sure that you don't encroach on any of the city
15 manager's duties, and you don't want something to be
16 said that you told somebody to do something when
17 that may not have been what you said. So I guess
18 I'm very careful -- I do have an open door policy.
19 I do return all my phone calls. But I'm very
20 careful what I say, especially to employees, because
21 you don't want them to think that you're directing
22 them in any way or trying to circumvent any of the
23 authority the charter gives to the city manager.

24 Q. The police officers are employees of the
25 City of Phenix City. Do you know if they have a

1 labor association that they're members of?

2 A. I don't know if they do. I know that --
3 I'm assuming it's still active -- the FOP. But I'm
4 not real sure of an association.

5 Q. And FOP, is that the fraternity order of
6 police?

7 A. Fraternal Order, yes, sir.

8 Q. Fraternal Order of Police. Have you ever
9 spoken to the leaders of the FOP representing the
10 police officers of the city?

11 A. Not as I know of. If I did, I don't know
12 that I did.

13 Q. Let's switch gears again. At some point in
14 time, did you learn that the plaintiff, David Davis,
15 in this case had been terminated from his position
16 as a firefighter with the city?

17 A. I did. I heard that.

18 Q. And who first told you that? How did you
19 first discover that he was fired?

20 A. If I'm not mistaken, it was one of the
21 council members that told me -- one of my fellow
22 council members.

23 Q. Would that have been Mr. Bush?

24 A. Yes.

25 Q. Did he call you up or did he see you on the

1 street or what happened?

2 A. I think we were talking on the phone one
3 day, and we were talking about different things, and
4 he happened to mention that Mr. Davis had been
5 terminated.

6 Q. And what was your response when you had
7 this conversation with Mr. Bush?

8 A. I didn't know that. I was kind of shocked
9 and surprised because I didn't know that. I hadn't
10 heard that. Typically, in a small town, you know --
11 I think this had happened like a week before. But
12 typically in a small town, you kind of know what --
13 you know, typically what goes on, whether it's
14 within the city or in the county or wherever it is,
15 you kind of hear stuff. The rumor mill around here
16 is strong so you hear those things, you know,
17 typically an hour after they happen, not a week.

18 Q. So when Council Member Bush informed you
19 that Mr. Davis had been discharged, as you put it,
20 you were surprised or shocked?

21 A. Yes.

22 Q. Was Council Member Bush also surprised at
23 the time?

24 A. I think he was, because when he -- I guess
25 when we were talking about it, when he told me, he

1 expected me to know that for some reason. And I
2 don't know -- I guess he thought I had already heard
3 that.

4 Q. Anything else said in that conversation
5 with Council Member Bush that you can remember?

6 A. We talked about a lot -- it was not -- the
7 gist of the conversation was not to discuss a
8 terminated employee; it was just about some other
9 stuff, and that just came up.

10 Q. When that conversation with Council Member
11 Bush was concluded and you had been informed that
12 Mr. Davis had been terminated, did you do anything
13 or talk to anyone further about the discharge of
14 Mr. Davis?

15 A. If I'm not mistaken, when I heard that
16 conversation, I was on the way out of town with my
17 family for a long weekend at the beach or something,
18 and so I didn't do anything immediately. But I
19 did -- when I came back to town, I asked about it.
20 I asked the city manager about it.

21 Q. So did you initiate that conversation with
22 the city manager?

23 A. Yes.

24 Q. Did you call him up on the phone?

25 A. No. I think I waited until I got back in

1 town, because I was on the way out of town at that
2 time.

3 Q. So did you meet with the city manager and
4 raise that issue of Mr. Davis's discharge?

5 A. Yes. Typically -- not just for that
6 purpose. Typically when I come in on Monday morning
7 or something like that, I'll go over some things;
8 typically complaints that I have had from people in
9 the city about fixing potholes or -- so I have a
10 list of stuff and just kind of go over that. And,
11 oh, by the way, I heard this, is this true kind of
12 thing. So just bring up stuff or we'll talk about a
13 car wreck or a fire or whatever the case is or --
14 you know, trash on the riverwalk, so just kind of go
15 over a list of stuff.

16 Q. And was it Mr. Roberts who was the city
17 manager that you discussed it with?

18 A. Yes.

19 Q. And do you regularly meet with the city
20 manager about various issues?

21 A. We don't have a regular meeting time, but
22 it's kind of -- you know, his office is right next
23 to mine. So when things come up, it's, hey, let me
24 ask you a question or, hey, I need to inform you of
25 this. So it's not a -- we don't really have a --

1 barring our outside regular meetings or work session
2 and council meeting, we don't really have official
3 meeting times or times that we meet unless there's a
4 specific purpose. But on these type conversations,
5 it will be, you know, I heard this or this is going
6 on, so -- but, typically, it's more in line with
7 minor complaints from citizens that I pass on to the
8 city manager, and he takes care of those things.

9 Q. On the particular occasion where you met
10 with City Manager Roberts concerning, in part at
11 least, the termination of Mr. Davis, did you have a
12 list of items for that meeting that you did, in
13 fact, want to discuss with the city manager?

14 A. I don't think I did, no.

15 Q. Okay. But one of the issues that you
16 raised with City Manager Roberts was the termination
17 of Mr. Davis?

18 A. Correct.

19 Q. And what do you recall the nature of that
20 conversation with Mr. Roberts concerning the
21 termination of Mr. Davis?

22 A. Went something like, I heard that David
23 Davis was terminated, is that true? And he
24 confirmed that it was.

25 Q. So, undoubtedly, there was more discussed

1 about that. Did you ask him why was he terminated?

2 A. I don't -- I -- I don't know if I did, but
3 I had heard that it was for breaking the chain of
4 command. And I don't know if I confirmed that or
5 not. I'm just -- because, typically, it's -- you
6 know, I would ask, you know, if I didn't know. But
7 in this case, I had heard that it was for breaching
8 the chain of command or breaking the chain of
9 command, so I don't know if I asked him or not. I
10 don't remember the specifics of the conversation.
11 But I kind of had heard, you know, going into the
12 conversation, the reason why.

13 Q. And who had told you the reason why
14 Mr. Davis was terminated?

15 A. Councilman Bush.

16 Q. And when you say breaking the chain of
17 command, please be more specific. Could that have
18 been perhaps a conversation or telephone discussion
19 that Mr. Davis had with you?

20 A. Yes.

21 Q. And could you elaborate on that?

22 A. Of the reason or the conversation that we
23 had?

24 Q. Well, both. Let's start with the reason
25 first, and then we'll go into the conversation that

1 Mr. Davis had with you.

2 A. Okay. The -- Well, let me make sure I
3 understand the question, okay? You want me to
4 discuss the conversation?

5 Q. That makes sense. Why don't we do that
6 initially? Why don't you discuss the nature of the
7 conversation that you had with Mr. Davis and who
8 initiated that first.

9 A. I got a call which -- a message from David
10 Davis, which I returned his phone call, which is
11 what I do. I try to return all my phone calls
12 unless it's just someone I absolutely can't
13 communicate with, and then I won't. But 99 percent
14 of the time, I return phone calls.

15 And I returned Mr. Davis' phone call, called him
16 back. And he wanted to discuss an item that was on
17 the agenda, an ordinance that was on the agenda to
18 change the probation period. And that was -- he
19 wanted to ask a question, I think, as to when it was
20 going to come up for a vote, and then also elaborate
21 on some input that he wanted to have, I guess -- I'm
22 not sure, but I think that he asked why we were, as
23 a council, going to change or are interested in
24 changing this probation time. So if I'm not
25 mistaken, that is all the conversation consisted of.

1 Q. Let me return to that conversation just a
2 couple of minutes. With regard to the discharge of
3 Mr. Davis, who, within the city, made that final
4 decision that he would be terminated?

5 A. I would assume it would be the city
6 manager.

7 Q. Well, I don't want you to assume. Do you
8 know, in fact, who has the authority and who, in
9 fact, made the final decision to terminate
10 Mr. Davis?

11 A. I don't get into the specifics of
12 personnel, but I'm just assuming the way it works --
13 I'm assuming that -- I can't tell you specifically.
14 You're asking for a specific answer. I don't know.

15 I would think that it would work based on the
16 fire chief making a recommendation of termination to
17 the city manager. If I'm not mistaken, I think the
18 fire chief has the authority to make those
19 decisions, but I think he runs those decisions by
20 the city manager prior to executing those things.

21 Q. Okay. But once again, just so the record
22 is clear, you were not involved in the
23 decisionmaking to terminate Mr. Davis; is that --

24 A. No.

25 Q. -- correct? Have you, Mr. Mayor, ever

1 spoken to the media or a journalist, newspaper
2 reporter, about the termination of Mr. Davis from
3 his job in the fire department?

4 A. I have been asked questions concerning
5 that.

6 Q. Was that a newspaper?

7 A. I'm sure both. I mean, typically, we get
8 hit by all the media, so I know that a newspaper did
9 ask about it, and I'm sure there was some other
10 media coverage also.

11 Q. And what newspaper are you referring to?

12 A. Would have been both the Columbus Ledger
13 across the river, and I'm sure the local paper
14 covered it also.

15 Q. And do you remember what you might have
16 said about the termination of Mr. Davis to those
17 newspapers?

18 A. I typically don't comment on things like
19 that, so it would have been more or less no comment
20 or something to that effect. Typically, personnel
21 issues, especially since they're not within my
22 realm, I try not to comment on them. And if I keep
23 getting pressed, I try to say as little as I can,
24 because I don't know a lot about those things
25 because that's not within my authority to -- it's

1 out of my pay grade.

2 Q. Sir, do you remember if you told a
3 journalist or a representative from a newspaper that
4 you were surprised to discover or learn that
5 Mr. Davis had been fired?

6 A. I'm sure I did, if they would have asked.

7 Q. And that would have been an accurate
8 comment, because I think you testified about that?

9 A. Yes.

10 Q. All right. Let me invite your attention to
11 Exhibit Number 10, if you would turn to that. And
12 this happens to be a pleading or a motion to dismiss
13 that was filed by the attorneys in this case earlier
14 on in the lawsuit. And if you would go to page
15 number five of this pleading.

16 A. Okay.

17 Q. And you'll see about a third of the way
18 down here on page five of this Motion to Dismiss
19 where it says, quote, it is not disputed that the
20 reason for the termination of the plaintiff was his
21 contact to the mayor, which was a direct violation
22 of the city's merit system's rules and regulations,
23 end quote. Do you see where it says that?

24 A. Yes, I do.

25 Q. As far as you know, sir, based upon the

1 information that you had about the circumstances
2 surrounding Mr. Davis's termination, is it fair and
3 accurate to say that that was the single reason or
4 single basis for the termination of Mr. Davis?

5 A. I -- I don't -- I know that was one of the
6 reasons. That's what I was told, that was one of
7 the reasons.

8 Q. Were there additional reasons for his
9 termination that you were told?

10 A. I'm assuming -- my answer is I assumed that
11 when I heard that, because I heard that was one of
12 the reasons but there were other pending factors
13 that weighed in on that.

14 Q. When you say there were other pending
15 factors that weighed in, what were those pending
16 factors?

17 A. I didn't get involved in that.

18 Q. So you don't know if there were other
19 factors?

20 A. No.

21 Q. A couple questions on Exhibit Number 11,
22 Mr. Mayor. This is a document that is over the name
23 of David Davis, then vice-president of the local
24 firefighters association dated January 25, 2005,
25 which was addressed to then fire chief Jerry Prater

1 in which Mr. Davis and the firefighters' labor
2 association have raised a number of issues that they
3 wanted to explore and discuss, including safety,
4 general employment issues, discipline, and
5 communications. Have you ever seen this document
6 before today?

7 A. I don't recall the document. I have gotten
8 some mail from them, but I don't know if this was
9 part of the package that I received or not.

10 Q. When you say you received mail from them,
11 you mean from the firefighters' labor association?

12 A. Well, let me say I don't know. I've gotten
13 mail -- I get anonymous mail from time to time that
14 talks about different things. So I don't know if I
15 received this or not. It does not look familiar to
16 me, but I have received some stuff and actually have
17 seen some stuff in the paper about different
18 things. So I don't know -- I don't know if I
19 received this under this cover, or if something like
20 this came to me anonymously, I don't know.

21 Q. But when you said just a moment ago that
22 you received some stuff or mailings, as I understood
23 your comment, and explained that you received
24 information or documents from the firefighters'
25 labor group or labor association. Do you recall

1 that?

2 A. I don't receive -- I don't believe I
3 received anything specifically from the firefighters
4 addressed to me, but have seen some stuff that has
5 circulated around about the firefighters' association
6 and some of the -- some of this stuff that is
7 outlined in here, I've heard of a couple of these
8 things.

9 Q. When you say you've seen some stuff --

10 A. Yes.

11 Q. -- just so it's clear --

12 A. Some paperwork. Some letters. Some basic
13 stuff that's been generated around, whether it's
14 come to me or other council members that may have
15 been circulated around.

16 Q. Okay. But this would have been letters or
17 memos from the firefighters' labor association; is
18 that correct?

19 A. Or copies of those, yes, sir.

20 Q. In the last two years since you've been
21 mayor?

22 A. Yes.

23 Q. And would those have been circulated or
24 given to the city council members as well?

25 A. I don't know that. Like I say, from time

1 to time, we share -- we share anonymous mail back
2 and forth, so from time to time, some people get
3 things and some others don't. So we -- but
4 sometimes if we find something that is -- not that
5 this would be amusing, but sometimes we share things
6 that come in the mail that are amusing about each
7 other.

8 I'm not sure whether this particular piece came
9 to any of us, but some of these things, as I look
10 over it, looks like we have seen some of this
11 stuff -- or I've seen some of this stuff.

12 Q. Okay. If you would, turn briefly to
13 Exhibit Number 14, which are copies of various
14 newspaper articles and letters to the editor of
15 newspapers in which the fire department policies and
16 issues are being discussed by various firefighters
17 as well as Chief Hunter and others. Do you recall,
18 at least in a general sense, Mr. Mayor, having seen
19 these newspaper articles in September of 2006 and
20 even earlier, September 2005, over the course of the
21 last couple of years?

22 A. I have. I'm looking over them now.

23 Q. Yes. Take your time, please.

24 A. I know I've seen some of these. I don't
25 know if I actually read all of these, but I have

1 seen some of these.

2 Q. And at least in a general sense, in these
3 various newspaper articles, particularly the first
4 one that's in Exhibit 14, a number of the
5 firefighters, including David Davis, expressed their
6 concerns about a poor or low morale in the fire
7 department and expressed their concerns about
8 understaffing within the city's fire department.
9 Have these particular issues or concerns been
10 brought to your attention about --

11 A. Through --

12 Q. I'm sorry. Go ahead.

13 A. Certainly when you read stuff like this in
14 the paper, that brings it to your attention because
15 everybody is talking about it when they see it in
16 the paper like that. So, yes, it was brought to our
17 attention.

18 Q. And other than the one meeting that you
19 indicated earlier in your testimony that you had
20 with the city manager and the chief of the fire
21 department, have you had other meetings to address
22 these issues of concern raised by the firefighters
23 and Mr. Davis?

24 A. None that I recall, no, sir.

25 Q. Just that one meeting?

1 A. Yes, sir.

2 Q. Do you know if any action was taken in
3 response to that one meeting by the fire department
4 or Chief Hunter to address these issues?

5 A. No. Chief Prater is who I met with at the
6 time. And, like I said, my only comments at the
7 time were -- you know, all I want to know is do you
8 know that there's some issues within the fire
9 department and do you have a plan to fix that.

10 Q. Did you do a follow-up, though, to see if
11 then Chief Jerry Prater addressed those issues?

12 A. No. See, that's where it gets -- that's
13 where the line is very specific.

14 Q. That's the disconnect?

15 A. Right. And then my correspondence after
16 that would be with the city manager, so --

17 Q. Okay. Let's move on to a letter that I
18 believe you received, but I certainly want to ask
19 you about it.

20 A. Okay.

21 Q. And this would be Exhibit Number 17,
22 Mayor. And this appears to be a letter from the
23 general president of the International Association
24 of Firefighters, a gentleman named Harold
25 Schaitberger, and it's dated January 31, 2006, and

1 it's addressed to the then City Manager Roberts.
2 And if you look at the last page, the third page on
3 this letter, it indicates that you were sent a copy
4 of this letter from Mr. Schaitberger?

5 A. Uh-huh.

6 Q. Do you recall, in fact, receiving a copy of
7 this letter?

8 A. I believe I did, yes, sir.

9 Q. Have you had a chance to review this letter
10 within the last couple of weeks?

11 A. I have not, no, sir.

12 Q. Okay. Well, take just a couple minutes now
13 to review it to yourself, because I want to ask you
14 several questions.

15 A. Okay.

16 Q. You've had a full opportunity to read
17 through that three-page letter from
18 Mr. Schaitberger?

19 A. Yes.

20 Q. Once again, you do recall having received
21 that letter at the time it was addressed?

22 A. I believe I did. I don't remember
23 specifically, but I believe I did.

24 Q. Now, when you received this letter back in
25 probably early February of 2006, did you do

1 anything? Talk to anyone in response to this
2 letter?

3 A. I don't think I did, no.

4 Q. Now, in part, this letter addressed --
5 you'll see I'm going further down on the first page
6 of this letter, Exhibit 17, that it addresses the
7 concerns, apparently, of the firefighters about any
8 threat with retaliation about implementing an 8-hour
9 shift. You see where it says that?

10 A. Yes.

11 Q. Were you familiar with that subject matter
12 at all?

13 A. I had heard that. I had heard that, I
14 guess, through the rumor mill, that there was a talk
15 of making changes in the shift work.

16 Q. Did you have any conversations or meetings
17 about that possibility of reducing the hours to an
18 8-hour shift?

19 A. No.

20 Q. And that would not have been within your
21 scope of authority as mayor?

22 A. No.

23 Q. On the top of page two of
24 Mr. Schaitberger's letter, it refers to local union
25 president Davis, in September of 2005, being issued

1 a counseling form or reprimand concerning his
2 speaking to the local media. Are you familiar with
3 that subject matter at all?

4 A. No.

5 Q. And then further on in this letter,
6 Mr. Schaitberger addresses the rights that public
7 employees, including firefighters, have under the
8 First Amendment about free speech and free
9 association. Are you familiar with those
10 principles, that public employees like firefighters
11 do have a constitutional right of free speech and
12 free association?

13 A. Sure.

14 Q. And how long have you been familiar with
15 those principles? Has it been a matter of years?

16 A. Probably early in civics, you know.

17 Q. In high school?

18 A. In high school, yes.

19 Q. So when Mr. Schaitberger addressed these
20 principles about the First Amendment rights of
21 Mr. Davis or public employees, it didn't come as a
22 shock or a surprise to you, did it?

23 A. No. I think he's reiterating what we
24 already know, that all people have a right to free
25 speech.